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ELECTION COMMISSION, INDIA

NOTIFICATION

New Delhi, the 7th May 1954

**S.R.O. 1613.**—Whereas the election of Shri Madan Singh, as a member of the Legislative Assembly of the State of Ajmer, from the Gagwana constituency of that Assembly, has been called in question by an Election Petition duly presented under Part VI of the Representation of the People Act, 1951 (XLIII of 1951), by Shri Kishen Lal Lamror, son of Ch. Moti Ram, Advocate, Kutchery Road, Ajmer;

And whereas, the Election Tribunal appointed by the Election Commission, in pursuance of the provisions of section 86 of the said Act, for the trial of the said Election Petition has, in pursuance of the provisions contained in section 103 of the said Act, sent a copy of its Order to the Commission;

Now, therefore, in pursuance of the provisions of Section 106 of the said Act, the Election Commission hereby publishes the said Order of the Tribunal.

BEFORE THE ELECTION TRIBUNAL STATE OF AJMER.

ELECTION PETITION NO. 23 OF 1953.

CORAM:

Shri J. D. Sharma, *Chairman*.

Shri C. Jacob

Shri S. N. Agarwal } *Members of the Election Tribunal.*

Shri Kishen Lal Lamror, Advocate—*Petitioner*, represented by Shri Parmatma Swaroop, Advocate.

*Vs.*

1. Shri Madan Singh son of Harlal, Daroga Rajput, Advocate, Station Road, Ajmer.
2. Shri Budha son of Kalu, Rewat Rajput of village P.O. Madarpura, P.S. Gagal, Tahsil and District Ajmer.
3. Shri Shiv Narain, Advocate, Imperial Road, Ajmer—*Respondents*—represented by Shri M. B. L. Bhargava and Shri P. D. Kudal, Advocates.

JUDGMENT

The petitioner Shri Kishenlal Lamror was elected to Ajmer State Legislative Assembly from the Gagwana Constituency in the General Elections of 1952. The respondent No. 2 Shri Budha filed the election petition No. 235 of 1952 and the

Tribunal by its judgment dated 22nd May 1953 set aside the election on the ground of the improper rejection of the nomination paper of one of the candidates. In the bye-election, the petitioner and the respondent Nos. 1 and 2 filed the nomination papers which were scrutinized on 14th August 1953. The respondent Nos. 1 and 2 filed objections before the Returning Officer against the acceptance of the petitioner's nomination paper on the ground that he held an office of profit. The Returning Officer upheld the objection and rejected the petitioner's nomination paper by his order dated 16th August 1953. The respondent No. 2 withdrew his candidature on the 17th August and the respondent No. 1 was declared duly elected as a member to the Legislative Assembly, Ajmer State.

The petitioner challenges the election of respondent No. 1 on the ground that he did not hold an office of profit and the rejection of his nomination paper was *malafide*, illegal and improper and the result of the election has been materially affected by the improper rejection. It is further alleged that the respondent No. 1 was guilty of major corrupt practice within the meaning of section 123 of the Representation of the People Act as he on or about 17th August 1953 in collusion with the respondent No. 3 authorized agent of the respondent No. 2, improperly and illegally procured the withdrawal of the candidature of respondent No. 2 by making a payment of Rs. 100 on 17th August 1953 and by promising a further payment of Rs. 2,100 on 18th August 1953 and that the return of election expenses filed by respondent No. 1 is false in material particulars, and is not in accordance with the prescribed rules.

The reliefs claimed are that the election of respondent No. 1 Shri Madan Singh be declared void and the respondents 1 and 3 be disqualified under section 140 of the Representation of the People Act.

The respondents contest the petition on the grounds: that the petitioner held an office of profit within the meaning of Article 102 of the Constitution and his nomination paper was therefore properly rejected and the rejection has not materially affected the result of the election. The respondent No. 3 was not the authorized agent of respondent No. 2 who withdrew his candidature voluntarily and of his own accord and no inducement was given or promised by the respondent Nos. 1 and 3. It is further pleaded that the return of election expenses filed by the respondent No. 1 is correct and in accordance with the prescribed rules and the petition is bad for misjoinder of parties and causes of action and verification of the petition and the annexure 'A' is defective. The respondents do not admit that the petition is within time. On the pleadings of the parties the following issues were framed:—

1. Does the petitioner Shri Kishenlal Lamror hold any office of profits?
2. Was the nomination of the petitioner wrongly rejected? If so, whether the result of the election has been materially affected by the said rejection?
3. Did the respondent No. 1 induce the respondent No. 2 to withdraw his candidature from the election on payment of Rs. 100 and a further promise of the payment of Rs. 2,100?
4. Was respondent No. 3 an agent of respondent No. 2 and did he in collusion with respondent No. 1 perpetrate the above corrupt practice?
5. Is the return of Election expenses filed by respondent No. 1 false in material particulars and not according to prescribed rules?
6. Is the petition within time?
7. Is the petition bad for misjoinder of parties and causes of action?
8. Are the verifications of the petition and of Appendix A annexed therewith defective and is the petition liable to be rejected on these grounds?
9. To what relief, if any, is the plaintiff entitled?

#### FINDINGS

*Issue No. 1.*—The objections to the nomination of the petitioner were filed on the ground that he held an office of profit under Article 102 of the Constitution as he (1) had been appointed an assessor on the Railway Rates Tribunal for a period of two years from 1st December 1951 by the Central Government *vide* No. 6265/TC, dated 7th November 1951 and that as an assessor he was entitled to get Rs. 50 per sitting as his fee and Rs. 10 halting allowance and 1st Class Railway fare, (2) he had been a nominated member of the District Local Board in 1951 and got remuneration for attending every meeting, (3) he was a member of the State Transport Authority, and appointment by the State Government *vide* Exts. 7 and 8, and (4) he held the office of the Assistant Recruiting officer and received T.A. and D.A.

In para. 17 of the written statement of the respondent No. 1, it is further averred that Shri Kishenlal Lamror was a nominated member of the District Board and its Chairman and was a member of the Advisory Committee of the State Soldiers, Sailors and Airmen Board, Ajmer, and was a member of the Regional Advisory Committee of the Western Railway. Shri Kishenlal Lamror admits having held all the offices, but denies that he was an assessor on the Railway Rates Tribunal. He has stated that none of the offices carried any emoluments. There is no evidence in rebuttal. Shri Mukat Beharilal Bhargava Advocate for the respondent No. 1 conceded in arguments that it was only on the ground of the petitioner being an assessor on the Railway Rates Tribunal that he held an office of profit within the meaning of Article 102 of the Constitution.

The only question for decision is whether the petitioner was an assessor on the Railway Rates Tribunal and whether as an assessor he held an office of profit within the meaning of Article 102. The notification dated 7th November 1951 in the Government of India Gazette of 17th November 1951 Exh. A/1 shows that the Central Government constituted the panels of assessors for the Railway in December 1951 and the name of Shri Kishen Lamror Advocate, Kutchery Road, Ajmer, figures at No. 56 among the persons representing agriculture. It is clear from the evidence that the above description answers the petitioner alone, for as admitted by him there is no other person of that description. It is pointed out that the petitioner never applied for being appointed an assessor and he never received any information of his name being entered in the panels of assessors. But the letter Exh. 10 from the Joint Director, Traffic Railway Board shows that an application for being entered as an assessor on the panels is not necessary. It is, therefore, immaterial that the petitioner did not apply for being appointed as assessor. It is also of no consequence that the petitioner did not receive any notice of his name being entered in the panels of assessors. The Gazette notification itself must be deemed to be notice not only to him but to the public at large. The mere fact that the petitioner was never summoned as an assessor cannot affect his selection as an assessor for once the panels of assessors are constituted by the Central Government, it is for the President of the Tribunal to select an assessor for being summoned under rule 42(1) of the Railway Rates Tribunal Rules, 1949.

In view of the notification Exh. A/1, there can be no doubt that the petitioner was on the panels of assessors constituted by the Central Government.

Rule 42(1) of the Railway Rates Tribunal Rules, 1949 provides that as soon as the date, time and place for the hearing of the complaint is fixed, the Secretary shall issue summons to the assessors selected by the President in equal members from the trade, industry and agriculture panels requiring them to attend at the time and place fixed for the hearing of the case. Every assessor thus summoned shall be bound to attend as required in order to advise the Tribunal and state his opinion on all the questions arising before it unless for satisfactory reasons he is exempted by the Tribunal from attending, in which case another assessor selected from the same panel by the President shall be summoned by the Secretary. Rule 43(1) prescribes the penalty for disobedience. Under Rule 44, the assessors are entitled to T.A. and fees as set out in Appendix C according to which an assessor who is not an official gets a sitting fee of Rs. 50 per day or any part thereof and Class I pass with 2 servants for journeys by rail.

Article 102 to which corresponds the Article 191 of the Constitution provides:—

"A person shall be disqualified for being chosen as, and for being, a member of either House of Parliament—

- (a) if he holds any office of profit under the Government of India or the Government of any State, other than an office declared by Parliament by law not to disqualify its holder".

If even one incident is wanting, then Article 102 or 191 will not apply. The points that call for consideration are:—

- (a) Is the assessorship of the Railway Rates Tribunal an office?
- (b) Does the petitioner as an assessor hold the Office?
- (c) Is the office under the Government of India or any State, and
- (d) Is it an office of profit?

The word 'office' has not been defined in the Constitution, but as held by this Tribunal in the Election Petition No. 241 of 1951 (*Gazette of India* Part II, dated 22nd June 1953 page 2093) it is not a term of art and its meaning and import are well understood. The predominant notion of the 'office' is an employment carrying certain emoluments. The dictionary meaning of the word 'office'

as given in the Chamber's Twentieth Century Dictionary is 'settled duty or emolument—a position imposing certain duties or giving a right to exercise an employment'. According to Blackstone quoted by the learned author B.A. in his Constitution of India page 346, an office means an employment with fees and emoluments thereunto belonging. Either party relies upon the opinion of the Election Commission in the matter of the Members of the Vindhya Pradesh Legislative Assembly who by a notification of the State Government had been appointed members of the District Advisory Councils and were entitled to T.A. and fixed D.A. of Rs. 5 per day of attendance (*Gazette of India* Part II section 3 dated 22nd April 1953 page 1115) Reference is made at page 1023 to the definition of 'office' given in Tomlin's Law Dictionary as "a right to exercise a public or private employment and to take the fees and emoluments thereunto belonging, whether public as those of magistrate, or private as of bailiffs, receivers and the like". Reliance was also placed upon Burrow's Words and Phrases where it is pointed out that, in order to constitute an 'office' the post should possess existence independent of the incumbent. On a consideration of the principles underlying the definitions of the word 'office' given above, there can be no doubt that the assessorship of the Railway Rates Tribunal is not an 'office' for it is not an employment and has no existence independent of the incumbent. The position of an assessor on the panels of the Railway Rates Tribunal is analogous to that of an assessor on the list prepared by the Sessions Judge under section 319 Cr.P.C. The question arose before the Election Tribunal, Bhopal, in the petition reported in the *Gazette of India* dated 6th January 1953 page 29. After referring to the provisions of sections 319 and 320 Cr.P.C. under which a list of assessors is made, the learned Tribunal says at page 36:—

"He appears in order to aid the Sessions Judge in obedience to a summons issued by the latter and must attend the court leaving his own private work apart, irrespective of the date being convenient to him or not, else he lays himself open to an action by the court for his non-attendance who could fine him to the tune of Rs. 100 under section 332 Cr.P.C."

The Tribunal further remarks:—

"We think the word 'hold' is very important and furnishes some key to the solution. The word 'hold' connotes some volition and choice and has no application to the case of any involuntary act of a person imposed upon him under the law of the land. We can never conceive the law being so absurd as to penalize a man for obeying the law. An assessor merely obeys the command of law. In the circumstances, it would be wrong to say that an assessor holds an office and it would be more correct to say that he is rather held to an office even if we were to apply the term 'office'.

The Tribunal was, therefore, of the opinion that an assessor did not hold an office much less an office of profit. The same view was taken by the Kotah Tribunal as reported in the *Gazette of India* dated 1st May 1953 page 1513 and by the Bikaner Tribunal in the *Gazette of India* dated 20th May 1953 page 1643 and by the Allahabad Tribunal in the *Gazette of India* dated 29th May 1953 page 1763 and by the Barnala Tribunal in the *Gazette of India* dated 9th June page 1869. He has no volition or choice in the matter either before or after his name is entered in the panels of assessors and it will be as true to say in his case that he does not hold an office but is held to an office. An employment every office is in essence an employment involves certain rights and duties but an assessor by the mere fact that he is an assessor has no right to exercise a public or private employment—to use the words of Tomlin's Law Dictionary. At the most he can be said to hold an office only during the period he actually sits as an assessor. In the matter of the Members of the Vindhya Pradesh Legislative Assembly, the Members who had not attended the meetings of the Advisory Councils were not alleged to be holding the office of profit. The petitioner was never summoned and he never acted as an assessor.

We are, therefore, of the opinion that not only is the assessorship of the Railway Rates Tribunal not an 'office', the petitioner as an assessor cannot be said to hold the 'office'.

We are further of the view that the office, if any, is not held under the Government of India or the Government of any State for once the panels of assessors are constituted, the assessors are under the control of the Railway Rates Tribunal and its President. It is the President who selects an assessor for being summoned and the Tribunal alone can take disciplinary action against an assessor guilty

of disobedience. No action of any kind can be taken by the Government of India. The office is, therefore, not held under the Government of India and hence Article 102 or 191 of the Constitution can have no application.

An assessor is entitled to a sitting fee of Rs. 50 besides the T. A. cannot be presumed to be a source of profit, there is unanimity on the point that the sitting fee is 'profit'. But the three other incidents being wanting, the incident of profit alone does not attract the application of Article 102 or 191 of the Constitution. It is therefore, held that the petitioner did not hold an office of profit within the meaning of Article 102 and 191 of the Constitution.

*Issue No. (2).*—In view of the above finding, the nomination of the petitioner was wrongly rejected. The improper rejection of the nomination paper raises a strong presumption which has not been rebutted in any manner that the result of the election has been materially affected thereby and we hold that the wrongful rejection of the petitioner's nomination paper has materially affected the result of the election.

*Issue No. (3)*—The allegation of the petitioner in para 10 of the petition, repeated in para 13(b) is that on or about 17th August 1953, the respondent No. 1 in collusion with the respondent No. 3 an authorized agent of respondent No. 2, induced the respondent No. 2 to withdraw his candidature on payment of Rs. 100 and a further promise to pay Rs. 2,100 on the 18th August. The same allegation is contained in the Appendix 'A', but instead of the 17th August, the date has been mentioned as 18th. Much stress has been laid by the respondents on the discrepancy and it has been urged that the entire allegation falls to the ground. But a mere cursory reading of Appendix A shows that the date 18th August has been typed by mistake and the clear suggestion is that the promise to pay Rs. 2,200 was made on the 17th and out of it Rs. 100 was paid on that date and the balance was to be paid next day. The discrepancy in the date is, therefore, immaterial and cannot be given much importance.

There is no direct evidence in support of the petitioner's allegation. The evidence is circumstantial supported by the admissions of respondent No. 2. He had filed the petition No. 235 of 1952 challenging the election of the petitioner. He filed nomination paper in the bye-election on the 11th August 1953 and objected to the nomination of the petitioner on the 14th August. On 16th August, the respondent No. 2 accompanied by Dhool Singh and Lala approached Shri Chand Karan Sarda for help from the Jan Sangh. He is said to have told Shri Chand Karan Sarda that the Congress men were pressing him to withdraw his candidature and he wanted the help of the Jan Sangh in that matter and also in his election. Shri Chand Karan Sarda P.W. 7 says that he asked Buddha to give in writing what he wanted to say and get it attested by two witnesses so that he could put up his application before the Executive Committee of the Jan Sangh thereupon Buddha got Exh. 12 written out by Dhool Singh. It was signed by him and Dhool Singh and Lala. It lays that the Congress people were pressing him to withdraw his candidature, but he wanted to contest the election and therefore solicited the help of Jan Sangh. Buddha admits that accompanied by Dhool Singh and Lala he approached Shri C. K. Sarda, but his suggestion is that the application Exh. 12 was not written out by Dhool Singh but by some body else. Dhool Singh R. W. 4 denies having written Exh. 12. But in view of the evidence of Shri C. K. Sarda there can be no doubt that the application Exh. 12 was written by Dhool Singh at the instance of Buddha. He withdrew his candidature on the 17th and the reason given by him is that the death of his wife had broken his heart and he was short of funds. But the wife had died before the nomination paper was filed and the want of funds must have existed prior to the withdrawal. It is further in the evidence of Buddha that he was anxious to be elected a member of the Legislative Assembly and 90 per cent. Rawats were supporting him. On the 19th Buddha gave through Shri S. K. Biswas Advocate the notice Exh. A/3 to Shri Madan Singh and the notice Exh. B/1 to Shri Sheo Narain Singh saying that on 17th August 1953 they had agreed to pay Rs. 2,000 in addition to the sum of Rs. 200 which he had spent from his pocket as a consideration for withdrawing his candidature and that out of it Rs. 100 was paid on the 17th and the rest was to be paid on next day, but it was not paid and they had cheated him in getting his candidature withdrawn with the selfish motive that Shri Madan Singh may be declared elected unopposed.

The suggestion of Buddha is that he had gone to the office of the petitioner who got his signatures on 5 or 6 typed papers and he did not know their contents. The petitioner admits that Buddha came to his office and told him that he had been deceived by Shri Madan Singh and Shri Sheo Narain Singh and begged to

be excused, but asked him to go away. He denies that he had taken the signatures of Buddha on any typed papers. Shri S. K. Biswas Advocate through whom the notices were given has stated that Buddha had come to him accompanied by certain persons of village Mohmi who were his clients and engaged him as a counsel and executed the Vakalatnama Exh. 1. He then on his instructions drafted the complaint, of which Exh. 2 is a copy and also wrote out a notice which Buddha took away for correction. It is further in the evidence of Shri S. K. Biswas that Buddha got the notice corrected by some body and then brought it to him and he approved and countersigned it. Shri S. K. Biswas does not know who had corrected the notice, but he is said to have been told by Buddha that it was corrected by Shri C. K. Sarda. But Shri C. K. Sarda denies having corrected any notice. It therefore remains a mystery who actually had written out the notices sent to the respondents 1 and 3. The suggestion on behalf of the respondents is that they were drafted and typed by the petitioner. As already stated, the suggestion is denied by the petitioner and except the statement of Buddha there is nothing on the record to support it. The application Exh. 2 and the notices Exhs. A/3 and P/1 coupled with the circumstantial evidence referred to above raises a strong suspicion against the respondents. But in his sworn testimony Buddha has denied that he withdrew his candidature on account of any inducement offered by respondent Nos. 1 and 3 there is no reason why his sworn testimony should not carry the same weight as the notice etc. In fact, the evidence on oath is entitled to more weight. Buddha had also repudiated the notices in his reply Exh. B/3 which he sent to the notice Exh. B/2 from the respondent No. 3. A similar reply Exh. B/8 was sent to Shri Madan Singh.

Kalu Khan P. W. 3 has stated that Buddha had told him in the collectorate that Shri Madan Singh had promised to pay him Rs. 2,000 and that he would be able to withdraw Rs. 250 which he had deposited for his candidature. Kalu Khan has not accounted for his presence in the Collectorate and much reliance cannot be placed upon his evidence. Lal Singh P. W. 4 has stated that on the 17th August 1953 the respondents 1 and 3 had come in a Jeep car to Madarpura and enquired from him where Buddha was and on being told that he was in Hokra they went there. It is further in the evidence of Lal Singh that about 4 P.M. on the same date Shri Madan Singh brought Buddha in a Jeep car from Ajmer and dropped him on the Jaipur Road in front of his mill and that Buddha was in a happy mood and had 2 or 3 flower garlands. Bharmal P. W. 6 has stated that Buddha and others of Madarpura had called a Panchayat in his village Hokra and on the second day Shri Sheo Narain Singh came in a Jeep car and called Buddha aside and had a talk with him. He further says that he overheard Shri Sheo Narain Singh saying "Vote Bechen". Then he and Buddha went away in the Jeep. Bharmal contradicts Lal Singh as he does not mention that Shri Madan Singh was also with Shri Sheo Narain Singh. There is no evidence to support Lal Singh's evidence. The respondents 1 and 3 deny having gone to Madarpura and Hokra and Shri Madan Singh says that he did not take Buddha in a Jeep car and drop him near the flour mill of Lal Singh. We see no reason to disbelieve them.

A charge of corrupt practice is like a criminal charge and the same degree of proof is required to establish it. On a consideration of the evidence, oral and circumstantial we are of opinion that although a suspicion does arise, the charge of corrupt practice has not been proved to our satisfaction. The issue is, therefore, decided in the negative.

*Issue No. (4).*—The respondent No. 3 was engaged by the respondent No. 2 only for arguing his objection to the nomination of the petitioner and he executed a Vakalatnama in his favour. But it does not mean that the respondent No. 3 was an agent of respondent No. 2. In view of the finding on issue No. 3, the question whether the respondent No. 3 perpetrated the corrupt practice in conclusion with respondent No. 1 does not arise.

*Issue No. (5).*—The petitioner was called upon to furnish the material particulars in which the return of election expenses was false, but he did not furnish any particulars. There is nothing on the record to show that the return of election expenses filed by respondent No. 1 is false in any particular or is not according to rules.

*Issue No. (6).*—The plea of limitation has no force and has not been pressed.

*Issue No. (7).*—On the allegations contained in the petition, the respondent No. 3 was a proper party and the petition, is not bad for misjoinder of parties or causes of action.

*Issue No. (8).*—The plea that the petition and Appendix A are not properly verified has not been pressed and has no force.

*Issue No. (9).*—In view of the above findings, the petitioner is entitled to have the election of the respondent No. 1 declared void but is not entitled to the relief that the respondents 1 and 3 be disqualified under section 140 of the Representation of People Act.

## ORDER

The election of Shri Madan Singh respondent No. 1 is declared void and is set aside. The parties will bear their own costs.

*The 28th April 1954.*

J. D. SHARMA.

C. JACOB.

SWAROOP NARAIN AGARWAL.

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[No. 82/23/53/9230.]

By Order,

D. J. SENGUPTA, Asstt, Secy.

